

August 16, 2010

City of Durham and McCormack Baron Salazar, Inc. and its Affiliates

Term Sheet

1. The project plan and design shall be guided by the Revitalization Plan dated July 6, 2010
2. The City selected Developer to undertake development activities within the proposed 120 acre Redevelopment Plan area to include the 20 acre Rolling Hills site. The City intends Developer to generally (a) plan and prepare the entire Rolling Hills site in keeping with the Revitalization Plan and (b) to plan and construct the necessary public infrastructure for Phase 1 and 2 of mixed income rental development on the Rolling Hills site (c) to develop, at minimum, Phases 1 and 2 Mixed Income Rental (approximately 211 units total with 132 in Phase 1 and approximately 79 in Phase 2 subject to the availability of funding). After Phase 1 and 2 are completed, the City shall examine the market and decide how to proceed with future phases. Should additional mixed income rental development be warranted and decided upon, then Developer expects to have the right of first refusal in negotiating subsequent agreements to undertake or participate in that development. Developer would also coordinate with the City on the selection of a for sale development partner for any portions of the Rolling Hills site not developed by Developer. The City will make the final determination of any for sale development partner selected.
3. General Developer Responsibilities:
 - a. Assemble, lead and supervise overall private and public sector design team; same general team as selected by MBS will design the site prep, public improvements and private improvements
 - b. Select contractor for private improvements through a prequalification and RFQ process as approved by the City and will bid the site preparation and public improvements work as required by the City
 - c. Carry out a and b above in keeping with City EO/EA and Workforce goals
 - d. Refine and develop physical plan as required
 - e. Provide, update and manage the schedule and budgets
 - f. Identify needed public improvements and site preparation costs
 - g. Identify private development site and building costs for Phase 1 and 2 Mixed income rental and develop financial plan for same and make application for state and private funding resources to include low income housing tax credits for each Phase; Developer has secured a reservation of \$1,300,000 in LIHTC for Phase 1 which should generate approximately \$10,000,000 in equity along with \$1,509,479 in state tax credits. Provided completion guaranties to lender(s) and investor and other pledges as required
4. General City Responsibilities

- a. Oversee the Revitalization effort
- b. Plan and implement any needed relocation
- c. Undertake Site Preparation Activities

The Phase 1 and Phase 2 development sites shall be delivered by the City to the Developer (or an appropriate Owner Partnership) at closing in a Clean and Buildable Condition within the timeframes anticipated by the Master Schedule or any Phase-specific schedule established by the parties. As used herein, "Clean and Buildable Condition" shall mean that: (i) the demolition of all designated structures and infrastructure, shall have been completed in accordance with all applicable laws, including Environmental Laws, including, but not limited to, those governing the removal of asbestos-containing materials and/or lead based paint; (ii) the removal and disposal of all debris from the demolition and all other surface and subsurface physical obstructions shall have been completed in accordance with all applicable laws, including Environmental Laws; (iii) all areas unsuitable to construction of the Phase 1 or Phase 2 New Improvements (such as but not limited to old foundations, retaining walls, areas of unsuitable or uncompacted fill, or on-site underground utilities which may be encountered), shall have been removed or closed, and all such areas shall have been compacted with suitable fill material, (iv) all areas shall have been rough graded to within 1' of final grade with clean and compactable fill to permit the construction thereon of building pads for the Phase 1 and Phase 2 New Improvements, along with required sedimentation and erosion control measures required by the City and State and (v) excavation for the storm detention pond and related temporary and permanent drainage measures needed to serve the entire 20 acre site.

The foregoing activities (i) - (iv), which are the responsibility of the City, together with the associated survey, design and engineering work, environmental remediation studies and activities and the associated geotechnical studies and activities are the responsibility of the City. The City shall be solely responsible for all costs and expenses associated with the mass grading design, engineering and construction of the Site Preparation Work and will engage MBS to manage and oversee this responsibility. This work will not include any construction of the Phase 1 and Phase 2 New Improvements.

The City will request Developer to manage and coordinate the above Site Preparation activities to be further described in one or more CDBG Agreements and provide grant funding for the above Site Preparation in an amount up to \$1,941,643 for the entire 20 acre Rolling Hills' site.

City shall agree to provide Developer right of entry to city owned property not yet not under Option Contract in order to conduct surveys, geotechnical testing, and environmental testing.

Any unknown and material condition that is discovered during Site Preparation and prior to delivery of site to Developer will be brought to the attention of the City by Developer and resolution will be discussed and agreed upon and paid for as part of Site Preparation activities. If City and Developer cannot agree upon a resolution and/or it is determined that the resolution would have a significant impact on overall project feasibility, then City has right to "declare event of infeasibility". At closing, Developer has option of securing environmental insurance on the property.

d. Provide Public Improvements

The City will be responsible for the design, engineering, funding and construction of the following which shall be the "Public Improvements": (a) new infrastructure improvements which shall include, but not be limited to, the road bed and road surface, all underground utilities, sewers, drains, etc. within the public right of way; (b) all curbs, curb cuts, and sidewalks, landscaping and lighting to all sides of each of the Phase 1 and Phase 2 development sites within the public right of way; (c) any new streets; and (d) all needed sewers and storm drainage in compliance with the City's storm water management regulations within the public right of way. The City shall be solely responsible for all costs and expenses associated with the design, engineering and construction of the Public Improvements work and will engage MBS to manage and oversee this responsibility.

The City will request Developer to manage and coordinate the above Public Improvements activities to be further described in one or more CDBG Agreements and provide grant funding for above Public Improvements in amount up to \$1,372,900 for Phase 1 and up to \$974,852 for Phase 2 subject to a mutual decision to undertake Phase 2.and

e. Provide construction and permanent subordinate financing assistance for development of Phase 1 in an amount up to \$5,486,468 and up to \$3,348,166 for Phase 2 Mixed (Phase 2 amount is dependent upon continued allocations of Federal HOME funds in amount approximate to 2011 allocation)

5. Phase 1 Predevelopment Budget and Funding

The City and Developer understand that a substantial amount of design, engineering and other pre-closing work (non-construction) needs to be accomplished between the time of tax credit award and closing/construction start to meet NCHFA's required Placed in service date of 12/30/2103. The City agrees to advance funding for Phase 1 3rd party pre-closing expenses in an amount as shown on attached Exhibit 1 for Phase 1 (with similar form to be prepared for Phase 2 at appropriate point in time), in the form of a non-recourse loan to the Developer. The Developer agrees to advance out of its own funds in the amount shown on the Exhibit A for 3rd party expenses and to provide and pay for the necessary level of staffing, also as shown on Exhibit A, to keep the project on schedule and achieve the closing date set forth in the schedule. At closing, the actual amount of pre-development funding that the City advances for 3rd party pre-closing costs will be either repaid or credited against its construction/permanent loan. The Developer will be reimbursed at closing for the actual amount of pre-closing funding it advances for 3rd party pre-closing costs. Developer agrees that all drawings, tracings, specifications and other studies and documents, including the Final Plans and Specifications prepared by or on behalf of Developer or otherwise furnished by Developer in connection with any Phase shall be collaterally assigned to the City as lender.

The developer shall use such funds only for design and pre-closing activities needed to advance the Phase 1 mixed income rental development plan, as specifically proposed to NCHFA and upon which the June 30, 2011 tax credit award was based upon.

6. Site Control

- a. Option to purchase
 - i. Phase 1 Option has already been executed and is dated January 13, 2010 and amended January 5, 2011
 - ii. City and developer will agree and execute Option Agreement for Phase 2 in substantially the same form as Phase 1 agreement at a future date to be determined.
7. Developer Compensation -The Developer shall be entitled to earn the developer fee allowed by NCHFA, plus a 16% management fee associated with Site Preparation and Public Improvements activities along with a 5% ownership interest.
8. Repayment of City Permanent Financing-City shall receive 60% of net cash flow from operations (per annual audited statement to be provided by Developer to City (no later than 120 days after fiscal year end for project) towards repayment of its subordinate financing.
9. Ownership of Rental Phases-Developer or its affiliate will be managing general partner of each Rental Phase Owner.
10. Property Management

McCormack Baron Ragan Management Services, Inc. (MBR) will manage all specific mixed income rental phases.

 - a. MBR has an identity of interest with MBS.
 - b. MBR will create and implement a marketing and lease up strategy for the rental units to achieve stabilized occupancy
 - c. Management agent fee shall be 6% of gross collected rents
11. Termination, including termination for convenience and withdrawal for infeasibility - Specific terms shall be established in the MDA regarding the rights of termination.